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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

SONYA RENEE *et al.*,

Plaintiffs,

v.

MARGARET SPELLINGS, in her official capacity;
UNITED STATES DEPARTMENT OF EDUCATION,
Defendants.

Case No. 07-04299 PJH

**DECLARATION OF TARA KINI IN
SUPPORT OF PLAINTIFFS' MOTION
FOR LEAVE TO PROCEED USING
FICTITIOUS NAMES AND TO SUBMIT
DECLARATIONS UNDER SEAL**

Civil Local Rule 79-5(c)

Time: 9:00 AM

Date: January 30, 2008

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DECLARATION OF TARA KINI

I, Tara Kini, hereby declare:

1. I am an attorney admitted to practice in California, employed as an attorney by Public Advocates, Inc., and counsel for plaintiffs. I make this declaration on my own personal knowledge in support of plaintiffs' motion for leave to proceed anonymously and for submission of a portion of plaintiff Jane Doe's and plaintiff N. Doe's declarations under seal, and if called as a witness, I am competent to testify to the matters set forth in this declaration.

2. I assert that those portions of the declarations of plaintiffs Jane Doe and N. Doe revealing their actual names are sealable.

3. Plaintiffs request for a stipulation from opposing counsel on this matter was denied.

4. This action has generated significant publicity such that plaintiffs could reasonably believe that their names will become public due to their participation in this lawsuit. When the case was filed in August 2007, it received nationwide new coverage, including a feature in *USA Today* and a wire story by the Associated Press that was picked up by news outlets nationally, including the *Washington Post*, *Philadelphia Inquirer*, *Houston Chronicle*, *San Diego Union Tribune*, *Newsday*, *Kansas City Star*, and *Miami Herald*. The case was also featured in all of California's major daily papers including the *San Francisco Chronicle*, *Los Angeles Times*, *Sacramento Bee*, *Contra Costa Times*, *Oakland Tribune*, and *San Jose Mercury News*. Individual plaintiffs were named in some of these articles.

5. Attached as Exhibit 1 to this declaration are true and correct copies, downloaded from the internet on the day they were published, of some of the news articles referenced in ¶ 4, *supra*. They are as follows:

- a. Juliet Williams, "'No Child' teacher training suit filed," ASSOCIATED PRESS (Aug. 21, 2007);
- b. Joel Rubin, "U.S. sued over teacher credentials," LOS ANGELES TIMES (Aug. 22, 2007);
- c. Shirley Dang, "Parents sue over teacher quality," INSIDE BAY AREA (Aug. 22, 2007) (published in CONTRA COSTA TIMES, OAKLAND TRIBUNE);

- 1 d. Nanette Asimov, "Lawsuit challenges labeling of 'highly qualified' teachers," SAN
2 FRANCISCO CHRONICLE (Aug. 22, 2007);
3 e. Laurel Rosenhall, "'Highly qualified' label for teacher trainees hit," SACRAMENTO BEE
4 (Aug. 22, 2007);
5 f. Greg Toppo, "Report, suit question teacher qualifications," USA TODAY (Aug. 22,
6 2007).

7
8 I declare under penalty of perjury under the laws of the State of California that the foregoing is
9 true and correct.

10
11 Dated: December 21, 2007

12
13 
14 TARA KINI

EXHIBIT 1

1 **Aug. 21, 2007, 8:57PM**

2 **'No Child' teacher training suit filed**

3 **By JULIET WILLIAMS Associated Press Writer**

4 **© 2007 The Associated Press**

5 SACRAMENTO, Calif. — When Maribel Heredia's son told her that his first-grade teacher was
6 "going to college" and that there would be a substitute in the classroom two days a week, she started
7 asking questions.

8 Only then did she learn that the teacher the Hayward Unified School District labeled "highly qualified"
9 was still a student herself.

10 Calling the teacher highly qualified allows the district to meet the provisions of the federal No Child
11 Left Behind education law, which requires that all students be taught by skilled teachers in core
12 subjects such as English and math. The district's classification is legal.

13 Heredia said she believes such classifications are misleading and allow districts to place unqualified
14 teachers in classrooms. On Tuesday, she was among a group of parents and education advocates who
15 sued the U.S. Department of Education over its interpretation of what makes a highly qualified
16 teacher.

17 "I didn't know that they let the teachers right from college, let them take a class all by themselves,"
18 Heredia said. "So the fact that she was considered highly qualified, that was a shocker to me."

19 Cheryl Petermann, assistant superintendent of human resources for the Hayward district, declined to
20 comment.

21 The loophole in the law allows school districts nationwide to skirt the spirit of No Child Left Behind,
22 according to the lawsuit filed in U.S. District Court in San Francisco. The suit claims that only
23 teachers with full state certification should be considered highly qualified.

24 "Congress did not intend that an individual with no prior training in how to teach would be labeled
25 'highly qualified' on her first day in the classroom merely because she is 'participating' in an alternative
26 route to certification," the lawsuit states.

27 Jack O'Connell, the state's superintendent of public instruction, said in a statement that he was
28 sympathetic to the parents' desire for better teachers. He also said there are not enough highly qualified
teachers in public schools serving blacks and Hispanics.

A spokeswoman for the Department of Education declined to comment on the lawsuit. A message left
by The Associated Press with the House Committee on Education and Labor was not returned.

The provision, which covers teachers in alternative certification programs, allows more than 10,000
interns in California to be classified as highly qualified, the lawsuit claims.

Nationwide, there are tens of thousands of "highly qualified" interns in the classroom, although there
is no way to know the exact number because states are not required to report it, said John Affeldt,

1 managing attorney with Public Advocates, a San Francisco law firm that is among the parties to the
2 lawsuit.

3 The No Child Left Behind Act also requires schools that receive federal poverty funding to notify
4 parents when their child is taught for more than four weeks by a teacher who is not highly qualified.
5 Districts can skip the mandate if the teachers are part of an alternative teacher training program.

6 Intern teachers who are still studying don't like the loophole, either, and should not be held to the same
7 standard as teachers who have decades of experience in the classroom, said Chelsea Byers, an intern
8 teacher in the Oakland Unified School District who also is labeled as highly qualified.

9 Byers, 22, a California State University East Bay student who is part of the Teach for America
10 program, is one of two intern teachers on a staff of seven at her middle school.

11 "It seems wrong that a school district can say 100 percent of its teachers are highly qualified, when in
12 reality 40 percent of the teachers are still in training," she said.

13 All states were supposed to ensure by June 2006 that 100 percent of teachers in core classes were
14 highly qualified, but the mandate was delayed to June 2007 when every state failed to make the
15 deadline.



<http://www.latimes.com/news/education/la-me-teachers22aug22,1,6303354,print.story?ctrack=7&cset=true>

From the Los Angeles Times

U.S. sued over teacher credentials

A coalition of parents and advocates say federal rules are violating education law.

By Joel Rubin

August 22, 2007

A coalition of California schools advocates and parents sued the federal government's Department of Education on Tuesday, claiming it is violating the teacher quality provisions of the No Child Left Behind education law.

The lawsuit, filed in U.S. District Court in San Francisco, is thought to be the first of its kind in the country and, if successful, could affect more than 10,000 teachers-in-training now working in California classrooms.

At the heart of the lawsuit is the part of the sweeping school reform law that requires districts to hire "highly qualified" teachers -- those who have earned their teaching credentials -- to teach core subjects such as math and English. Under the regulations written by the Department of Education to enforce the requirement, however, districts can count novice teachers who are still in credentialing programs as meeting that standard.

"Every parent should have the right to know what's going on with their children. I am leaving my children in these teachers' hands, and I want them taken care of in the best possible way," said Sonya Renee, a Los Angeles parent and plaintiff in the lawsuit. "I am not against interns being in my children's schools. But they should not be out there in front of a classroom on their own."

Though the suit could have implications for all states, the situation is most extreme in California, where last year about 10,700 intern teachers were in charge of classrooms, said John Affeldt, an attorney for Public Advocates Inc., the civil rights group leading the lawsuit.

In California, most teachers earn their credential through a yearlong graduate school program. But an alternative option allows those who demonstrate knowledge in a particular subject to teach while studying for their credential through an internship program run by a school district or university.

Under the regulations challenged in the lawsuit, such teachers are considered highly qualified as soon as they begin their internship program despite having little or no teaching experience.

1 That loophole, Affeldt said, leaves parents in the dark about their children's teachers. It also
2 compounds, he said, a larger issue in urban public school systems in which the least experienced
3 teachers, who have little seniority, are often assigned to the most demanding, troubled schools in poor,
4 minority neighborhoods.

5 No Child Left Behind prohibits districts from staffing these low-performing campuses with a
6 disproportionate number of teachers who are not highly qualified, but because of the Education
7 Department's loose definition, interns commonly end up at those campuses, lawyers for Public
8 Advocates said.

9 In a statement on the lawsuit, state Supt. of Public Instruction Jack O'Connell acknowledged the
10 problem. "We know that unfortunately in California public schools there remains an inequitable
11 distribution of highly qualified teachers. Too often, schools serving students who are African
12 American or Latino have a disproportionate number of underqualified and inexperienced teachers and
13 administrators," he said. O'Connell added that his agency works with districts to distribute highly
14 qualified teachers more equally.

15 In the lawsuit, Renee said her daughter's English and algebra classes at Washington Preparatory High
16 School in South Los Angeles last year were taught by interns. She said the school never notified her of
17 the teachers' status -- another requirement of the federal law.

18 "I was shocked," she said in an interview. "This does have an effect on how well a student is going to
19 do as they move on. They might not be carrying forward with them the information they need because
20 their teachers haven't been trained."

21 Last year, 4% of teachers in the Los Angeles Unified School District were interns -- about 1,200
22 teachers, according to district figures.

23 Samara Yudof, acting press secretary for the U.S. Department of Education, declined to comment on
24 the complaint, saying education officials had not had an opportunity to review it.

25 Public Advocates, a liberal nonprofit, has twice successfully challenged state agencies over teacher
26 quality issues. It also filed an unsuccessful suit aimed at throwing out the state's required high school
27 exit exam.

28 --

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http://www.insidebayarea.com/portlet/article/html/fragments/print_article.jsp?articleId=6686930&siteId=181

Parents sue over teacher quality
Suit claims new instructors counted as highly qualified

By Shirley Dang, STAFF WRITER
Inside Bay Area

Article Last Updated: 08/22/2007 02:41:10 AM PDT

Parents and students from the Hayward, Los Angeles and West Contra Costa school districts filed a federal lawsuit Tuesday against the U.S. Department of Education alleging that the department broke with laws meant to ensure a quality teacher in each classroom.

When Congress passed the No Child Left Behind Act in 2001, lawmakers specified that teachers needed to be credentialed and teach in a subject where they received proper training in order to be considered "highly qualified." Districts must notify parents each fall if their child's teacher fails to meet those requirements.

However the department allows states to count teacher interns as credentialed even though they are still in the process of earning certification.

Maribel Heredia, a parent of two Hayward students who is suing the department, said during a press conference that her son's first-grade teacher is an intern who leaves twice a week to finish up college classes — leaving her son Jose Aldana with a substitute twice a week.

"I feel that this is wrong to call this teacher highly qualified," Heredia said. "I feel like I'm being lied to."

Troy Flint, a spokesman for the Oakland school district, said it is short-sighted to assume interns are unqualified.

"Often, they have better qualifications in terms of their familiarity with the subject matter," he said, noting that many have bachelor's degrees in the subjects they are assigned to teach.

Flint also noted that it is already difficult to recruit people with math and science backgrounds into teaching. If people had to take two years off to complete a credentialing program, they'd be even less likely to change careers, he argued.

"It's how you pull people in from other walks of life," he said.

An official with the U.S. Department of Education declined to respond to the lawsuit.

"Consistent with the department's practice, we are not able to comment on a complaint that has not been served but we will of course review it closely when we do receive it," said Samara Yudof, U.S. Department of Education spokeswoman.

1 Heredia, three Richmond High School students and two social justice organizations were among those
2 who filed the lawsuit at the U.S. District Court in San Francisco. The complaint argues that the
3 department overstepped its authority when it created the regulation allowing teachers-in-training to
4 count as highly qualified.

5 Last school year, more than 10,700 interns worked in California schools as teachers with provisional
6 credentials, according to the state Department of Education.

7 Lawyers at the San Francisco civil rights firm Public Advocates who helped file the lawsuit say that
8 the loophole allows districts and the state to mask the shortage of trained teachers, particularly at
9 campuses with many poor students of color.

10 "If successful, this suit will prohibit states and districts from continuing the all too frequent practice of
11 concentrating interns at low-income and high-minority schools," said John Affeldt, managing attorney
12 of Public Advocates.

13 At Richmond High, one in 10 teachers worked as interns last school year, according to state data.

14 Three incoming juniors — Jazmine Johnson, Adriana Ramirez and one unnamed student — are suing.

15 As a freshman, Johnson took English, Spanish and geography from interns, according to the
16 complaint. Ramirez had interns for English and Spanish as a sophomore.

17 "It's not fair to the students," said Jessica Price, a former teaching intern at Richmond High who
18 recently earned her credential and will begin her second year there this fall. "Half their teachers are
19 just getting their bearing down. That's going to affect their education."

20 Interns still need guidance and time to learn the art of teaching, which did not happen in her case, she
21 said. Days after graduating from UC Santa Barbara, she found herself teaching summer school in
22 Watts.

23 "With just five days of training, we were already put in the classroom," Price said.

24 Last fall, Price arrived at Richmond High as an intern, one of nine on staff, she said. She has since
25 earned her credential, but still feels green.

26 "Last year when I walked through the door, no way was I highly qualified," Price said.

27 Some schools rely heavily on interns. In Pittsburg, nearly a quarter of the teachers at Central Middle
28 School were interns last year. At Edna Brewer Middle School in Oakland, more than a third of the
staff were interns from universities or colleges. In Oakland, interns make up 10 percent of teachers.

Recent University of Oregon graduate Chelsea Byers started her first year at the Melrose Leadership
Academy in Oakland last year after six weeks of training with Teach for America program.

"Even with one year of experience today, I would still not call myself highly qualified," Byers said.

However interns do not necessarily lower the quality of education at every school.

1 "You can't equate having a lot of veteran teachers with the achievement of students," said Gary
2 McHenry, superintendent of the Mt. Diablo school district. "Sometimes you have a younger staff and
they get amazing results."

3 At Eagle Peak Montessori elementary school in Walnut Creek, six out of 10 teachers held certificates
4 in 2006-07. Two worked as interns and another two taught on emergency credentials. The average
years of experience is 2.4 years.

5 However, the charter school earned some of the best achievement scores of all elementary schools in
6 the Mt. Diablo school district. Similarly, the Oakland Charter Academy posted some of the highest test
7 scores among middle schools in the Oakland school district last school year even though five out of
six teachers were interns, according to state data.

8 Academy Director Jorge Lopez said he finds it easier to work with younger, less experienced teachers
9 because they are more open to the concept of charter schools.

10 "I always go after teachers without credentials because they're not tainted," Lopez said.

11 But new teachers still need guidance, said Jane West, a vice president at the American Association of
12 Colleges for Teacher Education. Intern programs fill a vital role in preparing the next wave of
teachers.

13 However those programs have changed from a training ground into a standard way of filling the holes
14 left by retirees and those leaving the industry.

15 "There's a real price to be paid for that," West said.

16 Staff writers Eric Louie, Katy Murphy, Kristofer Noceda and Kimberly S. Wetzel contributed to this
17 story. Shirley Dang covers education. Reach her at 925-977-8418 or sdang@bayareanewsgroup.com.

San Francisco Chronicle

Lawsuit challenges labeling of 'highly qualified' teachers

[Nanette Asimov, Chronicle Staff Writer](#)

Wednesday, August 22, 2007

The U.S. Department of Education is violating the spirit of its own No Child Left Behind education act by identifying thousands of uncredentialed teachers as "highly qualified," according to a lawsuit filed Tuesday by a San Francisco public interest law firm.

Public Advocates, which has sued over No Child Left Behind issues before, says the law intends for every public school teacher of core subjects - from math and English to civics and Spanish - to be "highly qualified."

But federal regulations, the suit says, provide a loophole by giving uncredentialed teachers a way of being listed as "highly qualified" if they meet other qualifications, such as being enrolled in a teacher preparation class with "intensive supervision."

Public Advocates' lawsuit calls that a loophole Congress never intended when it passed the No Child Left Behind Act in 2002.

"The regulation eviscerates Congress' explicit standard for the 'highly qualified' teacher owed every student by relabeling over 10,000 novice teachers still in training in California, and tens of thousands of such teachers nationwide as 'highly qualified,'" the lawsuit says.

The suit, filed in U.S. District Court in San Francisco, names the Education Department and U.S. Education Secretary Margaret Spellings as defendants. It says that only fully credentialed teachers should be considered highly qualified and wants the Education Department to accept that criterion.

Education Department spokeswoman Samara Yudof declined to comment on the lawsuit.

The suit was filed on behalf of low-income families whose children are most likely to be taught by teachers-in-training, said attorney John Affeldt of Public Advocates.

The suit also demands better enforcement of another provision of No Child Left Behind that requires parents to be notified if their child is taught by a non-highly qualified teacher for more than four weeks.

California and many other states have a severe shortage of experienced teachers, particularly those willing to teach in inner-city schools.

The plaintiffs say the shortage doesn't justify pretending to have highly qualified teachers who really aren't.

"I feel I'm being lied to," said parent Maribel Heredia of Hayward, who joined the suit. "There are hundreds of parents in our school district who will never know that their child's teacher is not trained to teach."

1 Heredia didn't know that her own child's teacher had no experience until her 6-year-old son, Joey
2 Aldana, accidentally informed her.

3 Joey, who started first grade at East Avenue Elementary in July, mentioned to his mom that his teacher
4 also was going to school, just as he was.

5 Heredia asked around and learned that Joey's teacher was studying how to be a teacher.

6 "She is not highly qualified," Heredia said. "I'm not saying she's a bad teacher or a bad person, but I do
7 think this 'highly qualified' thing does not fit."

8 The lawsuit - titled Renee vs. Spellings, for a Los Angeles parent named Sonya Renee - is the third
9 filed by Public Advocates to address teachers' credentials since the passage of No Child Left Behind
10 five years ago.

11 In 2005, a Superior Court judge voided about 4,000 credentials awarded by the California Commission
12 on Teacher Credentialing after the law firm claimed the certificates had been awarded unfairly.

13 In 2003, also in response to a suit by Public Advocates, the state Board of Education narrowed its
14 definition of "highly qualified" teachers to conform with the U.S. Department of Education's
15 interpretation, which includes the teachers-in-training.

16 *E-mail Nanette Asimov at nasimov@sfchronicle.com.*

17 <http://sfgate.com/cgi-bin/article.cgi?f=/c/a/2007/08/22/BARVRMIUJ.DTL>

18 This article appeared on page **B - 5** of the San Francisco Chronicle
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The Web Site of The Sacramento Bee

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'Highly qualified' label for teacher trainees hit

Plaintiffs say allowing the description for interns skirts the law, hurting disadvantaged students.

By Laurel Rosenhall - Bee Staff Writer

Published 12:00 am PDT Wednesday, August 22, 2007

About 59,000 teachers across the country -- including 355 in the Sacramento region -- are considered "highly qualified" by the government even though they don't yet have a teaching credential, according to a lawsuit filed Tuesday in U.S. District Court in San Francisco.

The suit alleges that a loophole in the No Child Left Behind law allows the government to misrepresent how prepared teachers are for their jobs, perpetuating a pattern of clustering inexperienced teachers in the neediest schools.

No Child Left Behind, a sweeping federal law intended to close the achievement gap and improve poor children's math and English skills, requires that all public school students have "highly qualified" teachers in core academic subjects. It also requires that states make an effort to spread teachers equitably among schools so that disadvantaged children are not more likely than others to be taught by underprepared teachers.

The federal Department of Education allows teachers to be labeled "highly qualified" even if they are interns, working in a classroom while in the process of earning a teaching credential.

"This violates both the letter and spirit of No Child Left Behind," said Jenny Pearlman, an attorney with Public Advocates, the legal group that filed the suit. "The act clearly defines a highly qualified teacher as one who has obtained full state certification."

Samara Yudof, acting press secretary for the Department of Education, said the agency could not comment because it had not yet been served with the lawsuit.

"We will of course review it closely when we do receive it," Yudof said by e-mail.

The lawsuit challenges the regulations that detail how the No Child Left Behind law is applied. It seeks to lift the "highly qualified" label from intern teachers so that public reports will more accurately describe teachers' experience.

California has more than 10,000 intern teachers, and the majority work in schools where at least 90 percent of students are nonwhite, the lawsuit says.

1 In the Sacramento region, the Sacramento City Unified School District has the greatest number of
2 intern teachers. It employed 128 intern teachers last school year, state data show, which means that
interns make up about 5 percent of Sacramento City Unified's teacher work force.

3 Statewide, interns constitute about 3.5 percent of public school teachers.

4 Chelsea Byers is one of them. She graduated from college a year ago and enrolled in a teacher
5 credentialing program at California State University, East Bay. At the same time, she began teaching
seventh grade in the Oakland Unified School District.

6 On her first day in front of the classroom -- with just six weeks of training in how to teach -- Byers
7 said she was labeled highly qualified because she was in the process of obtaining a credential.

8 "Even with one year of teaching under my belt today I would still not consider myself highly
9 qualified," said Byers, 23. "We can't get up to a (truly) highly qualified status if there is no distinction
between entry level status and highly qualified status."

10 Not everyone sees it that way. David Gordon, superintendent of schools for Sacramento County, said
11 some intern teachers are very good at their jobs. He developed an intern program in the 1990s as
superintendent of the Elk Grove Unified School District.

12 "It's a mistake to say as a blanket statement that no intern could be deemed highly qualified. It's
13 idiosyncratic both to the type of program and the type of people you're recruiting into the program," he
said.

14 For example, interns in the Elk Grove program received several months of training before they were
15 put in a classroom, Gordon said. And many of the interns were middle-aged people transitioning into
16 new careers as teachers -- not recent college graduates who might be unaccustomed to being in
authority roles.

17 "I found a lot of them with less than full-blown training to be much stronger than others with
18 conventional credentials," Gordon said.

19 The California Teachers Association -- the politically powerful union that represents most of the
20 state's 300,000 teachers -- believes internship programs are an important way to bring more teachers
into the profession.

21 "If you take away the highly qualified label from intern programs, then intern programs are going to
22 disappear," said Dean Vogel, vice president of the organization.

23 "If you can't be designated as highly qualified, what district is going to put you there? Because No
24 Child Left Behind says every teacher has to be highly qualified. It's a very interesting predicament that
we're in."

Report, suit question teacher qualifications
By Greg Toppo, USA TODAY
08/22/07

A federal lawsuit and a new report challenge the Bush administration's rules on teacher credentials, saying they fail to ensure that students have a highly qualified teacher. But the lawsuit and the report offer diverging recommendations for fixing the problem.

The lawsuit, filed Tuesday in San Francisco by several civil rights groups, challenges the U.S. Education Department's regulations for "highly qualified teachers," saying the department has watered down the standard by allowing thousands of teachers-in-training in California and elsewhere to be declared highly qualified before they even finish training.

Poor and minority students, the suit says, are more likely to be taught by interns; in many cases, about 12% of poor students' teachers are interns. Statewide, only about 3% of teachers are interns.

Amy Wilkins of The Education Trust, an advocacy group, says the Education Department "has failed miserably" in ensuring that all students have highly qualified teachers. She also says the state of California and its school districts "have sought to undermine the intent of the law at every turn."

The Education Department did not immediately respond to a request for comment.

The report, from the Center on Education Policy, a Washington think tank that has monitored Bush's No Child Left Behind education reform law, says the law has had little effect on either student achievement or the qualifications of the teacher workforce. But it recommends the federal government give states more leeway, not less, in how they define a qualified teacher.

http://www.usatoday.com/news/education/2007-08-21-teachers-lawsuit_N.htm